

FILED  
U. S. DISTRICT COURT  
DISTRICT OF NEBRASKA

2015 MAY 11 PM 12:20

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RICHARD E. COOLEY, ) NO. 4:14CR3041  
Petitioner, )  
v. ) MOTION FOR ORDER GRANTING  
UNITED STATES OF AMERICA, ) RELEASE FROM UNLAWFUL CUSTODY  
Respondent. ) AND ISSUE ORDER FOR HEARING  
                  ) AND APPOINT HIM COUNSEL AND  
                  ) ALTERNATIVELY ISSUE WRIT

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COMES NOW Petitioner Richard E. Cooley, Pro Se, pursuant to the Court's inherent powers over his custody and he respectfully moves the Court as well under 18 United States Codes § 3006A to order him released from unlawful custody pending review by this Court as he moves for an Order to conduct a prompt hearing--in the alternative issue a writ of habeas corpus ad testificandum under 28 United States Codes § 2241(e) for his immediate production to testify in Court. He states:

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1. Petitioner Richard E. Cooley has filed his 2255 motion to vacate the judgment of conviction and sentence. First, petitioner is sixty-one (61) and one half years old and he has to take medications due to his ongoing high blood pressure. He also takes other medications regarding his health. He has prostate reducers due to problems there. He has a history of heart problems in his family and the care and treatment in the Bureau of Prisons is less than the established basis for competent care. He believes that if the Court merely orders him produced that the transfer by the Marshalls Service will jeopardize his health and well-being. He is, of course, innocent of any criminal act that the government brought thus the argument relevant to finality should not be addressed here. Innocent people do not belong in a prison cell especially here where it's clearly on the records raising a significant doubt as to the constitutional validity of the involuntary plea.

2. Petitioner has absolutely no criminal history at all. He has been evaluated and determined not to meet the categorization of "sex offender" he is not in any means. He is not a danger to the community and not a threat to flee. His age, his health concerns, and the factually claims raises a serious doubt and show a reasonable probability the Court will grant the relief. All of these factors

3. The law is clear that Federal Courts have inherent powers to release a defendant pending review of the 2255 motion, Cherek v. United States, 767 F.2d 335 (7th Cir. 1985) In re Wainwright, 518 F.2d 173 (5th Cir. 1975)(per curiam) Oster v. United States, 584 F.2d 594, 596 n.1 (2d Cir. 1978) Lands v. Deeds, 878 F.2d 318 (9th Cir. 1989) Paff v Welus, 648 F.2d 689 (10th Cir. 1980). Petitioner's case he urges this Court presents exceptional circumstances that warrant special treatment and thereupon in the interest of justice and the overwhelming probability of success on the merits with his health and age this Court should grant a release pending review by this Court.

4. Petitioner (obviously) is receiving legal assistance from another but that individual may soon be released from custody or transferred by the Bureau of Prisons. Thus, this will leave petitioner almost defenseless due to his apparent lack of experience with the law and courts he needs the Court to appoint counsel so that counsel can provide him and the Court with the proper and timely legal aruments and counsel can obtain documents that need to be produced (discovery) petitioner never reviewed. The Court has discretion to appoint counsel and petitioner supports his indigency with the contents of the attached affidavit. In the alternative the Court should issue a specific order producing him to the Court requiring the

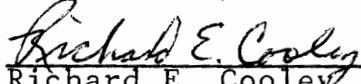
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together with the absence of any criminal history, no evidence of dangerousness nor risk to flee and issue a writ of habeas corpus ad testificandum under 2241(e) vesting the Court with such authority.

WHEREFORE Petitioner Richard E. Cooley respectfully moves this Court for an Order granting him a release pending review by the Court of his § 2255 motion, order a prompt hearing, appoint counsel or in the alternative issue a writ of habeas corpus ad testificandum for the production of him to the Court to testify.

The 6 day of May, 2015.

Respectfully submitted,

  
Richard E. Cooley, petitioner